

**STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission**

In the Matter of:)	Docket No. 99-SIT-3
)	
Metcalf Energy Center)	COMMITTEE PROPOSED DECISION
[Calpine Corporation and)	RE: NOI EXEMPTION
Bechtel Enterprises, Inc.])	
<u>Petition for Jurisdictional Determination</u>)	

I. THE PROJECT

Calpine Corporation and Bechtel Enterprises (Petitioners) propose to develop, finance, construct and operate a 600 megawatt (MW) natural gas-fired combined cycle power plant that is a market-based response to the creation of the California Power Exchange (PX). The Metcalf Energy Center will be located in Santa Clara County, about one-half mile west of Pacific Gas & Electric's (PG&E) Metcalf substation in southern San Jose. Petitioners will participate in the competitive electricity marketplace and expect to sell the project's electricity output through the PX, other power-marketing outlets, bilateral sales contracts with third parties, and the ancillary services market of the California Independent System Operator (ISO).

II. PROCEDURAL HISTORY

On February 17, 1999, Petitioners filed a "Petition for Jurisdictional Determination" requesting that the Commission find the Metcalf Energy Center eligible for an exemption from the Notice of Intention (NOI) requirements of Public Resources Code (PRC) section 25502. Petitioners assert that their project conforms with the provisions of Public Resources Code (PRC) section 25540.6(a)(1) which exempts certain power plant projects from the NOI process.

On November 4, 1998, the Commission adopted certain findings in the *Blythe Energy* Decision as precedential for NOI exemption proceedings.¹ In that Decision, the Commission also indicated that Petitions for NOI exemptions may be reviewed on the basis of sworn testimony in lieu of evidentiary hearings. Petitioners submitted sworn testimony as responses to certain questions enumerated in *Blythe Energy* and asked of similarly situated Petitioners. (Exhibit 2, *Attachment to the Petition*).

By Notice mailed on February 25, 1999, the Energy Facility Siting Committee scheduled a hearing on the Petition before the full Commission at its April 14, 1999, Business Meeting. In accord with Commission regulations,² the Committee served the Notice and Petition upon the individuals, organizations, and businesses identified by Petitioners as “interested parties,” as well as upon other persons and entities appearing on pertinent mailing lists. The Notice directed all entities wishing to participate in the proceeding to file written statements by March 17, 1999. Commission Staff filed a statement pursuant to the Notice.

On March 24, 1999, the Committee issued this Proposed Decision which is based on the sworn testimony filed by Petitioners, as well as the statement submitted by Staff. The Proposed Decision was served on Petitioners and all interested parties for review and comment prior to the Commission’s April 14th hearing on the matter.

III. APPLICABLE LAW

A. Statutory Requirements.

Public Resources Code section 25502 provides in pertinent part that:

¹ Docket No. 98-SIT-2; CEC Publication No. P800-98-004.

² Title 20, Cal. Code of Regs., Section 1232.

Each person proposing to construct a thermal powerplant...shall submit to the commission a notice of intention [NOI] to file an application for the certification of the site and related facility or facilities.³

The purpose of the NOI is to provide an open planning process in which the project proponent, interested agencies, and members of the public have an opportunity to review the principal environmental, public health and safety, socioeconomic, and technological advantages and disadvantages of potential sites for a proposed project. (Cal. Code of Regs., tit. 20, § 1721). The NOI process also reviews whether a proposed project conforms with the Commission's assessment of electricity demand adopted pursuant to Section 25305 et seq. of the Public Resources Code. (PRC, § 25502).

Successful completion of the NOI process is a prerequisite to the second stage of power plant licensing, i.e., the Application for Certification (AFC). Public Resources Code section 25540.6, however, *exempts* certain projects from the NOI process and allows them to proceed directly to the AFC stage.⁴ Projects eligible for this expedited licensing process include:

...a thermal powerplant which is the result of a competitive solicitation or negotiation for new generation resources and will employ natural gas-fired technology... . (PRC, § 25540.6(a)(1).)⁵

Petitioners contend their proposed project fits within this provision.

B. Policy Guidance.

The Commission has authority to interpret pertinent statutory or regulatory provisions. Typically, such Commission policy is expressed in its biennial Electricity Report (*ER*), the most recently adopted of which is controlling for power plant proposals filed during an *ER*'s operative life. (PRC,

³ The Commission generally has 12 months from the time an NOI filing is accepted in which to conduct this review. (PRC, § 25516.6(a).)

⁴ The AFC process anticipates a *final* licensing decision within 12 months of filing an application. See, PRC, § 25540.6(a).

⁵ PRC, § 25540.6 lists several specific NOI exemptions that include: cogeneration, solar, modification of a specific facility, site specific, less than 100 MW, and demonstration projects.

§§ 25309 and 25523(f)). In the present instance, this guidance appears as part of the 1996 *ER* in which the Commission stated:

For gas-fired powerplants which are the result of competitive solicitations or negotiations, we will continue our process [announced in the Addendum to *ER 94*] for granting exemptions from NOI requirements to such projects. (*ER 96*, p. 75, Endnote 1).

The policy expressed in *ER 94* and the Addendum to *ER 94* supported the development of a competitive market in the production and sales of electricity. The Addendum clarified Commission policy on legislation amending Section 25540.6 to allow NOI exemptions for natural gas-fired projects that are “the result of a competitive solicitation or negotiation.” (AB 1884; Statutes of 1993).⁶ In the Addendum, the Commission expressed its preference for a “...broad construction of what it means to be 'the result of a competitive solicitation or negotiation'.”⁷ In *ER 96*, the Commission expanded the views contained in *ER 94* and the *ER 94* Addendum to encourage the development of merchant power plants that participate in the newly emerging electricity marketplace without the benefit of ratepayer guarantees. (*ER 96* at pp. 71-72). Until the *Blythe Energy* Decision was issued, formal Commission policy on NOI exemptions was limited to these Electricity Reports.⁸

C. Precedential Decision

⁶ The Legislative Counsel's Digest for AB 1884 states that the amendments were intended to change the statute to conform to the present-day competitive marketplace of energy development. “[T]he siting provisions of the Act were written at a time when large baseload power plants were the types of plants being considered by the Commission and when competition between utilities and second party power producers was nonexistent.” (Leg. Counsel's Digest, Bill Analysis for AB 1884, Third Reading, April 12, 1993). At the time AB 1884 was adopted, the federal Public Utilities Regulatory Policy Act (PURPA) and other related state laws had established a process (Biennial Plan Report Update or BRPU) to allow regulated public utilities and independent power producers to compete in the marketplace through a competitive bid process in order to meet demand. (*Ibid.*; 8/27/93 Senate Analysis).

⁷ *ER 94* Addendum, Revision 1, p. 2.

⁸ See, *Blythe Energy*, pp. 3-6 for a more complete discussion of the NOI exemption policies contained in *ER 94* and *ER 96*.

In *Blythe Energy*, the Commission further interpreted the scope of its policies pertaining to NOI exemptions, and determined that a natural gas-fired merchant project which proposes to sell its power in the competitive electricity market, and does not put ratepayers at risk, would generally be eligible for an NOI exemption. The Commission declared the following Findings as *Precedent*:⁹

- 1) The Commission adopted an “Addendum to the 1994 Electricity Report” on February 14, 1996.
- 2) This Addendum sets forth policies and procedures which apply to the interpretation of Public Resources Code (PRC) section 25540.6(a)(1) and are, on a case-by-case basis, specifically applicable to individual Petitions seeking an exemption from the Notice of Intention (NOI) provisions of PRC, § 25502.
- 3) The Commission adopted the 1996 Electricity Report (*ER*) which continued the policies set forth in *ER 94* and in the Addendum.
- 4) The California Power Exchange (PX) was created by AB 1890 to provide an efficient “competitive auction” open to all power producers, resulting in competitive market pricing at no risk to ratepayers. (Pub. Util. Code, § 355).
- 5) The creation of the PX, which promotes a competitive wholesale market, may be viewed as a continuing series of solicitations and negotiations, which are of the type reasonably envisioned by the policy expressed in the Addendum and PRC, § 25540.6(a)(1).
- 6) The PX market, which began the competitive auction on March 31 1998, replaced the solicitation process that existed under the Biennial Report Plan Update (BRPU).

In addition, the Commission found that power sales to the PX are the “result of a competitive solicitation or negotiation for new generation resources” within the meaning of PRC, § 25540.6(a)(1).¹⁰ This finding includes natural gas-fired projects that sell power to other power exchanges and/or wholesale, and/or retail marketers, and/or direct access power markets, and/or other power consumers.¹¹

⁹ *Blythe Energy*, pp. 18-19.

¹⁰ Commission Order adopting *Blythe Energy* (Order No. 98-1104-04); see also, *Blythe Energy*, pp. 17-18.

¹¹ *Ibid.*

IV. EVIDENCE OF RECORD

The *Blythe Energy* Decision provides that a Petitioner may establish eligibility for an NOI exemption by filing sworn testimony in response to certain specific inquiries enumerated in that Decision.¹² Petitioners responded to the following inquiries in an Attachment to their Petition.¹³

1. Describe the specific nexus between the particular project proposed by Petitioner and the PX's solicitations for “day ahead” and “hourly bids”. How is the proposed project anticipated to perform under both scenarios regarding its baseload and peaking capacities?
2. Is Petitioner negotiating with any other potential power exchanges or power purchasers, including wholesale and/or retail markets?
3. What is Petitioner's registration status at the PX? If Petitioner has not begun the registration process, what are Petitioner's plans regarding registration and negotiation for a “PX Participation Agreement?”
4. Identify Petitioner's principal corporate owners and/or other entities or individuals who are legally and financially responsible for the development, construction, and operation of the proposed project.
5. Describe Petitioner's experience and assets with regard to power generation acquisition, and power plant development, ownership, and operation.
6. Describe the specific site location where the project will be constructed, and describe Petitioner's site selection criteria that led to this particular site location.
7. Provide evidence describing the project components sufficiently to establish that the proposed facility is a natural gas-fired power plant.
8. Provide evidence to establish that the proposed project can be developed and operated without the benefit of ratepayer support or guarantees.
9. Explain how Petitioner's negotiations may be affected by the Independent System Operator's “congestion” and “ancillary services” market activities.

¹² *Id.*, fn. 27 at p. 18.

¹³ Petitioners included the responses to the Committee's inquiries as an attachment to their Petition; those responses constitute the evidentiary record upon which the Committee has based this Proposed Decision. (Exhibit 2).

Petitioners. Petitioners' responses to the Committee's *Blythe Energy* inquiries were executed under penalty of perjury by Ron Walter, Senior Vice President of Calpine Corporation and Douglas B. Brown, Vice President of Bechtel Enterprises. The Committee reviewed the sworn responses submitted by Petitioners and based its Findings and Conclusions upon that submittal, in lieu of an evidentiary hearing.

Staff. Staff agreed with Petitioners' assertions that the proposed merchant project is a natural gas-fired power plant that meets the statutory test for being the result of a competitive solicitation. (Staff Statement filed March 19, 1999)¹⁴. Staff expressed its belief that existing Commission policy and previous NOI exemption cases support such a conclusion.¹⁵ (*Ibid.*)

There were no other comments or other evidence filed in this matter.

V. FINDINGS and CONCLUSIONS

Based upon the precedent established in *Blythe Energy*, and in the absence of any contravening evidence, the Committee finds that the proposed Metcalf Energy Center is the "result of a competitive solicitation or negotiation" within the meaning of PRC, § 25540.6(a)(1).

Based on the totality of the record, we make the following findings and conclusions:

- 1) Calpine Corporation and Bechtel Enterprises, Inc. filed a Petition seeking an exemption from the Notice of Intention (NOI) process in accord with the policy guidance set forth in the *ER 94* Addendum, *ER 96*, and the *Blythe Energy* Decision, and in compliance with the requirements of Title 20, California Code of Regulations, sections 1230, et seq.

¹⁴ Although Staff's Statement was due on March 17, 1999, the Committee accepted the Staff's late filing since Staff did not timely receive the Notice that was originally mailed on February 25, 1999.

¹⁵ Staff cites the Commission's Decisions in *Blythe Energy*, *supra*, and subsequent cases adopted by the Commission, including *Elk Hills* (98-SIT-6); *AES South City* (98-SIT-7); *AES Antelope Valley* (98-SIT-8); and *Pastoria* (99-SIT-1).

- 2) Petitioners propose a natural gas-fired combined cycle power plant, nominally rated at 600 MW (Metcalf Energy Center). Major equipment for the project is typical of natural gas-fired power plants, including two gas-fired combustion turbine generators (CTGs) equipped with dry low Nox combustors and steam injection capability; a single steam turbine generator; two heat recovery steam generators (HRSGs) with duct burners; and auxiliary equipment.
- 3) Calpine Corporation and Bechtel Enterprises are engaged in a joint venture to develop, construct, and operate the proposed Metcalf Energy Center as part of their agreement to develop new power plants to serve the San Francisco Bay area. Each partner owns 50 percent of the Metcalf Energy Center.
- 4) Calpine, a California corporation based in San Jose is engaged in the acquisition, development, and operation of power generation facilities and the sale of electricity throughout the U.S. and international markets. Calpine owns an interest in 26 power projects and geothermal steamfields with an aggregate capacity of 3,097 MW, and with revenues of \$276.3 million in 1997. Two additional Calpine projects (total 434 MW) are under construction and seven more are in development (total 3,320 MW). Bechtel Enterprises is the development and financing affiliate of Bechtel Group, Inc., a global engineering and construction firm that has built more than 450 power plants over the past 50 years, with an aggregate capacity of 250,000 MW.
- 5) The Metcalf Energy Center will be located in Santa Clara County on approximately 10 acres within a 126-acre parcel in southern San Jose approximately one-half mile west of PG&E's Metcalf substation. Specifically, the proposed site is west of Highway 101, on the west side of Monterey Road (State Road 82), one-quarter mile south of the intersection of Monterey and Metcalf Roads. There are four 500/230kV transmission towers about 500 feet north of the site where the project will interconnect. Natural gas is available from the existing PG&E backbone line located one mile east of the site.
- 6) Petitioners chose the site based on its proximity to transmission and gas interconnection points; water resources; distance of one-mile from the nearest residential area; land use and zoning compatibility; and strategic location to support transmission reliability in the Silicon Valley.
- 7) The proposed project is a market-based response to the deregulation of California's electricity industry. Petitioners expect that power produced by the project will be sold through the California Power Exchange (PX), and through bilateral sales in other wholesale and retail power-marketing outlets. Petitioners are negotiating with power marketers, municipal utilities, and irrigation districts and also anticipate sales to spot markets for ancillary services through the California Independent System Operator (ISO).
- 8) The Metcalf Energy Center is a baseload project, designed for start-up and load following capability to participate effectively in the competitive "day ahead" and "hourly" power

markets. The Petitioners expect the project to operate on a flexible schedule to respond to market demand.

- 9) Petitioners do not anticipate congestion-related issues associated with the project. They expect to participate in the ISO's competitive bidding processes for acquisition of ancillary services.
- 10) The Metcalf Energy Center is a merchant project that is not eligible for ratepayer support mechanisms. The proposed project will be financed, built, and operated with private funds that the owners will provide entirely at their own risk.
- 11) Calpine is registered with the PX through its newly acquired Sonoma Geothermal plant. It is also registered with the Automated Power Exchange, which is registered with the PX.

In view of the above findings, we conclude that Petitioners' proposed natural gas-fired power plant project is the "result of a competitive solicitation or negotiation" for the sale of its electric power. Under these circumstances, and in light of the factors mentioned above and discussed elsewhere in this Decision, and based on the precedent established in the *Blythe Energy* Decision, the Metcalf Energy Center as described in the Petition and the record herein, qualifies for an exemption from the Notice of Intention as set forth in Public Resources Code section 25540.6(a)(1).

Dated: _____

ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

ROBERT A. LAURIE
Commissioner and Presiding Member
Energy Facility Siting Committee

DAVID A. ROHY, Ph.D.
Vice Chair and Associate Member
Energy Facility Siting Committee

APPENDIX A

EVIDENCE OF RECORD

**STATE OF CALIFORNIA
Energy Resources Conservation
and Development Commission**

In the Matter of:)	Docket No. 99-SIT-3
)	
Metcalf Energy Center)	COMMITTEE PROPOSED DECISION
[Calpine Corporation and)	RE: NOI EXEMPTION
Bechtel Enterprises, Inc.])	
<u>Petition for Jurisdictional Determination</u>)	

EVIDENCE OF RECORD

<u>Exhibit</u>	<u>Date</u>	<u>Document</u>
1	February 17, 1999	Petition for Jurisdictional Determination filed by Calpine Corporation and Bechtel Enterprises (Metcalf Energy Center)
2	February 17, 1999	Responses to Energy Facility Siting Committee's Inquiries 1 through 9, filed by Calpine Corporation and Bechtel Enterprises (Metcalf Energy Center)
3	March 12, 1999	Map and Supplemental Information Regarding the Project's Location filed by Calpine Corporation and Bechtel Enterprises (Metcalf Energy Center)
4	March 19, 1999	Energy Commission Staff Statement filed by Energy Commission Staff

APPENDIX B

PROOF OF SERVICE LIST